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**TITLE 327 WATER POLLUTION CONTROL DIVISION**

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**FIRST NOTICE OF COMMENT PERIOD**

LSA Document #20-26

**WATER PROGRAM PERMITTING FEES****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rules and amendments to rules in [327 IAC 5](#), [327 IAC 15](#), [327 IAC 8](#), and [327 IAC 19-7-1](#) concerning water program permit fees as required by House Enrolled Act (HEA) 1278. IDEM seeks comment on the affected citations listed and any other provisions of Title 327 that may be affected by this rulemaking.

**CITATIONS AFFECTED:** [327 IAC 5](#); [327 IAC 8](#); [327 IAC 15](#); [327 IAC 19-7-1](#).

**AUTHORITY:** [IC 4-22-2](#); [IC 13-14-9](#); [IC 13-16](#).

**SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING****Basic Purpose and Background**

HEA 1278, also referred to as Public Law 250-2019, was passed by the 2019 General Assembly to amend the process in [IC 13-16](#) concerning the adoption of environmental fees by the Environmental Rules Board (board). To establish or change the amount of a fee, the board is required to take into account the costs to IDEM for: (1) issuance or approval of a permit; (2) services in connection with supervision, review, and other activities related to the issuance or approval of a permit; (3) surveillance of the activity or property covered by the permit issuance or approval; (4) amendments, modifications, and renewals of a permit or approval; and (5) fees charged for equivalent activities in other states. IDEM is to assist the board in doing a periodic review of fees by: (1) arranging for an independent study of the costs that the board may consider; (2) developing information on fees charged for equivalent activities in other states; and (3) periodically developing information on activities, functions, and permits that have been added or eliminated since the previous fee structure was adopted. The board may direct IDEM to initiate a rulemaking under [IC 13-14-9](#) to address fees based on the information collected by IDEM and presented to the board. HEA 1278 also establishes that the board may not change fees more than one time in five years and the fee increase may not amount to more than ten percent.

In addition to the process established in [IC 13-16](#) for future rulemakings to increase environmental fees, HEA 1278 requires the board to adopt rules once before January 1, 2022, to increase the amount of the fees for water-related programs under [IC 13-18-10](#), [IC 13-18-20](#), and [IC 13-18-20.5](#) along with fees for solid waste and hazardous waste programs under [IC 13-20-21](#) and [IC 13-22-12](#) by an aggregate amount of \$3,200,000 greater than the aggregate fee revenue actually received in the year immediately preceding the proposed fee increases.

This rulemaking addresses the one-time fee increases required under HEA 1278 for [IC 13-18-10](#), [IC 13-18-20](#), and [IC 13-18-20.5](#), regarding confined feeding operations, NPDES permits, and public water systems, respectively. The fees associated with issuing permits, amendments, modifications, and renewals have not changed since 1996 for NPDES permits, 2003 for public water system permits, and 1997 for confined feeding operation permits. A separate rulemaking will address the one-time fee increases allowed under HEA 1278 for solid waste and hazardous waste programs under [IC 13-20-21](#) and [IC 13-22-12](#). IDEM is working on the allocation of the \$3,200,000 among the affected fees in the water and waste programs and where in Titles 327 and 329 the fees will be placed. To facilitate making decisions regarding the amount of the fee increases, IDEM is assessing the fees charged for similar activities in other states.

HEA 1278 also requires the board to increase air permitting fees established by [IC 13-17-8](#) for the Title V Operating Permit Program by an amount calculated to be \$2,000,000 greater than the aggregate fee revenue actually received from the Title V program fees in the year immediately preceding the fee increase allowed by HEA 1278. The Title V fee increases will also be addressed in a separate rulemaking.

IDEM seeks comment on the affected citations listed, including suggestions for specific language, any other provisions of Title 327 that may be affected by this rulemaking, and alternative ways to achieve the purpose of the rulemaking in accordance with HEA 1278.

**Alternatives to Be Considered Within the Rulemaking**

Alternative 1. Adopt rules to address environmental fees presently contained in the statutes [IC 13-18-10](#), [IC 13-18-20](#), and [IC 13-18-20.5](#).

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is not imposed by federal law and there is no comparable federal law. This alternative is required by HEA 1278 passed by the 2019 General Assembly to increase environmental fees.
- If it is a federal requirement, is it different from federal law? Not applicable.

- If it is different, describe the differences. Not applicable.

Alternative 2. Do not adopt rules to address environmental fees presently contained in the statutes [IC 13-18-10](#), [IC 13-18-20](#), and [IC 13-18-20.5](#).

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No. Adoption of rules to address environmental fees is a statutory mandate. Not adopting the rules would be a violation of state law.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

#### **Applicable Federal Law**

No federal law is applicable to this rulemaking. This rulemaking is required by HEA 1278 passed by the 2019 General Assembly to increase environmental fees.

#### **Potential Fiscal Impact**

Potential Fiscal Impact of Alternative 1. The fiscal impact for fees related to [IC 13-18-10](#), [IC 13-18-20](#), and [IC 13-18-20.5](#) in combination with fee increases adopted for the solid and hazardous waste programs under [IC 13-20-21](#) and [IC 13-22-12](#) is not to exceed \$3,200,000 as mandated by HEA 1278.

Potential Fiscal Impact of Alternative 2. There is no fiscal impact to any regulated entity under Alternative 2, but IDEM will run out of operating funds for the affected programs in the next biennium if applicable fees are not increased in accordance with HEA 1278.

#### **Small Business Assistance Information**

IDEM established a compliance and technical assistance program (CTAP) under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on CTAP and other resources available can be found at:

[www.in.gov/idem/ctap](http://www.in.gov/idem/ctap)

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Angela Taylor  
IDEM Small Business Regulatory Coordinator/CTAP Small Business Liaison  
IGCN 1316  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 233-0572 or (800) 988-7901  
[ctap@idem.in.gov](mailto:ctap@idem.in.gov)

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-6](#) is:

Katelyn Colclazier  
Small Business Ombudsman  
Indiana Economic Development Corporation  
One North Capitol, Suite 700  
Indianapolis, IN 46204  
(317) 431-1560  
[kcolclazier@iedc.in.gov](mailto:kcolclazier@iedc.in.gov)

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-6](#), specifically [IC 5-28-17-6\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Erin Moorhous  
IDEM Small Business Assistance Program Ombudsman/Business, Agricultural, and Legislative Liaison  
IGCN 1301  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 232-8921 or (800) 451-6027  
[emoorhou@idem.in.gov](mailto:emoorhou@idem.in.gov)

#### **Public Participation and Work Group Information**

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact MaryAnn Stevens, Rules Development Branch, Office of Legal Counsel at (317) 232-8635 or (800) 451-6027 (in Indiana).

#### **REQUEST FOR PUBLIC COMMENTS**

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
  - (2) The submission of suggestions for the development of draft rule language.
- Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:

LSA Document #20-26 Title 327 Fees  
MaryAnn Stevens  
Rules Development Branch  
Office of Legal Counsel  
Indiana Department of Environmental Management  
Indiana Government Center North  
100 North Senate Avenue  
Indianapolis, IN 46204-2251

- (2) By facsimile to (317) 233-5970. Please confirm the timely receipt of faxed comments by calling the Rules Development Branch at (317) 232-8922.

- (3) By electronic mail to [mstevens@idem.in.gov](mailto:mstevens@idem.in.gov). To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

- (4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, in order to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

#### COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped not later than March 20, 2020. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from MaryAnn Stevens, Rules Development Branch, Office of Legal Counsel, (317) 232-8635 or (800) 451-6027 (in Indiana).

Christine Pedersen, Section Chief  
Rules Development Branch  
Office of Legal Counsel

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An [html](#) version of this document.